

Message Text

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TO AMEMBASSY WELLINGTON

INFO CSAF/XOOS/LGPLA/PRMM

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CINCPAC

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CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: TSPA, MARR, NZ

SUBJECT: CONTRACTOR OPERATION OF MT. JOHN - TAXATION

REFS: (A) WELLINGTON 2879

(B) WELLINGTON 2743

(C) WELLINGTON 2443

(D) STATE 194600

(E) WELLINGTON 377

1. DEPARTMENT AND DOD APPRECIATE EFFORTS OF EMBASSY TO
SECURE APPROPRIATE TAX RELIEF FROM GNZ IN CONNECTION WITH
CONTRACTOR OPERATION OF MT. JOHN BAKER-NUNN FACILITY.

BASED ON INFORMATION CONTAINED IN REFS A, B AND C, WE ARE
HOPEFUL THAT ELEMENTS OF SATISFACTORY RESOLUTION OF ISSUE
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ARE FALLING INTO PLACE AND THAT PROLONGED NEGOTIATIONS

ON MATTER WILL NOT BE NECESSARY.

2. UNLESS EMBASSY PERCEIVES REASONS TO THE CONTRARY, WE PROPOSE APPROACH TO GNZ ALONG FOLLOWING LINES:

(A) EMBASSY SHOULD ADVISE GNZ THAT PRESENT LEASE OF MT. JOHN SITE TO USAF WILL REMAIN INTACT AND THERE WILL BE NO SUBLEASE TO THE CONTRACTOR OR SUBCONTRACTOR. THEREFORE, BASED ON GNZ POSITION SET FORTH IN FOREIGN MINISTRY NOTE

DATED SEPTEMBER 16 (REF B), THERE WOULD APPEAR TO BE AGREEMENT BETWEEN OUR TWO GOVERNMENTS THAT MT. JOHN FACILITY WILL NOT CONSTITUTE A "PERMANENT ESTABLISHMENT; OF THE CONTRACTOR OR SUBCONTRACTOR, AND UNLESS THE CONTRACTOR OR SUBCONTRACTOR IN SOME WAY CREATE A SEPARATE -PERMANENT ESTABLISHMENT, IN NEW ZEALAND, THEY WILL BE EXEMPT FROM INCOME TAX IN NEW ZEALAND UNDER THE DOUBLE TAXATION CONVENTION. SINCE WE DO NOT ANTICIPATE ANY NEED FOR THE CONTRACTOR OR SUBCONTRACTOR TO HAVE A SEPARATE "PERMANENT ESTABLISHMENT" IN NEW ZEALAND, OUR MUTUAL UNDERSTANDING ON THE APPLICATION OF THE DOUBLE TAXATION CONVENTION APPEARS TO RESOLVE THE QUESTION OF TAXATION OF THE INCOME OF THE CONTRACTOR AND SUBCONTRACTOR.

(B) WE HAVE NOTED GNZ POSITION REPORTED PARA 2, REF C THAT EXEMPTION FROM NEW ZEALAND INCOME TAXES FOR CONTRACTOR EMPLOYEES UNDER 1963 AEROSPACE DISTURBANCES AGREEMENT WAS BASED ON EMPLOYEES SPENDING LESS THAN 183 DAYS PER TAX YEAR IN NEW ZEALAND. ALTHOUGH WE PERCEIVE NO BASIS FOR SUCH A LIMITATION ON THE EXEMPTION UNDER THE TERMS OF THE AEROSPACE DISTURBANCES AGREEMENT, WE ARE PREPARED TO ACCEPT THE GNZ POSITION ON THIS ISSUE AS AMPLIFIED IN REF B IF GNZ WILL AGREE TO EXEMPTION FROM CUSTOMS DUTIES ON AUTOMOBILES AND HOUSEHOLD EFFECTS OF U.S. NATIONAL CONTRACTOR EMPLOYEES AND THEIR DEPENDENTS. AS NOTED IN REF D, AND APPARENTLY NOT REFUTED BY GNZ, 1963 AEROSPACE DISTURBANCES AGREEMENT ACCORDED SUCH AN EXEMPTION FOR CONTRACTOR EMPLOYEES (SEE PARAGRAPHS 3(A) AND 7 OF AGREEMENT). WE ASSUME, THEREFORE, THAT ADEQUATE BASIS FOR ACCORDING SUCH AN EXEMPTION EXISTS UNDER NEW CONFIDENTIAL

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ZEALAND LAW. (THROUGHOUT THESE DISCUSSIONS WITH GNZ AUTHORITIES, WE HAVE BEEN PROCEEDING ON UNDERSTANDING THERE IS AGREEMENT ON BOTH SIDES THAT ALL EQUIPMENT, MATERIAL, SUPPLIES AND OTHER PROPERTY IMPORTED INTO NEW ZEALAND FOR THE OPERATION AND MAINTENANCE OF THE BAKER-NUNN STATION WILL BE EXEMPT FROM DUTY (SEE PARA 4, REF E).

3. IN SUMMARY, FOLLOWING ARE ELEMENTS OF PROPOSED

RESOLUTION OF TAXATION ISSUE:

(A) IN ABSENCE OF CREATION OF 'PERMANENT ESTABLISHMENT,
BY CONTRACTOR OR SUBCONTRACTOR SEPARATE FROM MT. JOHN
FACILITY, THEIR INCOME WILL NOT BE SUBJECT TO NEW ZEALAND
TAX.

(B) U.S. NATIONAL EMPLOYEES OF CONTRACTOR OR SUBCONTRACTOR
WILL BE EXEMPT FROM NEW ZELAND INCOME TAX ONLY IF THEIR
STAY IN NEW ZEALAND IS LESS THAN 183 DAYS IN ANY INCOME
YEAR (1 APRIL - 31 MARCH).

(C) PROPERTY IMPORTED IN CONNECTION WITH THE OPERATION
AND MAINTENANCE OF THE STATION, INCLUDING THE PRIVATELY
OWNED AUTOMOBILES AND HOUSEHOLD EFFECTS OF THE U.S.
NATIONAL EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR,
WILL BE ACCORDED DUTY FREE ENTRY. INGERSOLL

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